

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB     JUNE 12, 00  
   U.S. DEPARTMENT OF COMMERCE  
   PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Bridgford Foods Corp.

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Serial No. 75/476,918

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David A. Plumley of Christie, Parker & Hale, LLP, for Bridgford  
Foods Corp.

Mitchell Front, Trademark Examining Attorney, Law Office 111  
(Craig Taylor, Managing Attorney).

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Before Cissel, Hohein and Rogers, Administrative Trademark  
Judges.

Opinion by Cissel, Administrative Trademark Judge:

On April 30, 1998, applicant applied to register the mark  
"SPORTSMAN'S CUT" for what were subsequently identified by  
amendment as "meat based snack foods," in Class 29. The  
original identification-of-goods clause had read: "jerky and  
other snack food." The basis for the application was  
applicant's assertion that it possessed a bona fide intention to  
use the mark in connection with these goods in commerce.

The Examining Attorney refused registration under Section 2(d) of the Lanham Act on the grounds that applicant's mark, as used in connection with meat-based snack foods, so resembles two registered marks, owned by different entities, that confusion is likely. The registered marks are "SPORTSMAN'S MIX," which is registered<sup>1</sup> (with a disclaimer of the word "MIX") for a "mixture of dried fruits and shelled, roasted or otherwise processed nuts," in Class 29; and "SPORTSMAN'S," which is registered<sup>2</sup> for "processed meats and potato salad," in Class 29.

Responsive to the refusal to register, applicant argued that confusion is not likely with either of the cited registered marks. In support of this position, applicant submitted information retrieved from a trademark database concerning thirteen marks, each used with food items in Class 29 or Class 30, which consist of or include the word "SPORTSMAN'S" or "SPORTSMEN'S" and which have either been registered or for which applications to register are pending. Applicant argued that the existence of these applications and registrations demonstrates that "SPORTSMAN'S" is weak in trademark significance.

The Examining Attorney was not persuaded by applicant's

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<sup>1</sup> Reg. No. 1,183,123, issued on Dec. 22, 1981 to Hoody Corp. based on a claim of use since Feb. 1977; combined affidavit under sections 8 and 15 received and accepted.

<sup>2</sup> Reg. No. 2,103,293, issued on Oct. 7, 1997 to the partnership of Warren, Barbara, Jeffrey and Timothy Will based on a claim of use since July 28, 1973.

evidence or argument, and with the second Office Action, he made the refusal to register final with respect to both of the cited registrations. Attached to the final refusal were copies of printouts from Office records of eighteen registrations wherein the listed goods include both "nuts" and "jerky." Each registration is based on use in commerce. Some of these registrations also list dried fruits as well as other types of meat-based snacks. The Examining Attorney argued that this evidence demonstrates that the goods specified in the instant application and sold under the mark "SPORTSMAN'S CUT" are closely related to dried fruit and nuts, which are the goods listed in the cited registration for "SPORTSMAN'S MIX."

Responsive to the final refusal of registration, applicant presented additional argument that confusion is not likely. Submitted in support of applicant's contention that "SPORTSMAN'S" is weak in trademark significance was a copy of a printout from an electronic telephone directory search showing 174 listings for people having the surname "Sportsman."

Applicant's additional argument and evidence of surname significance of "SPORTSMAN" did not persuade the Examining Attorney to withdraw the refusal to register. Applicant then filed its brief, the Examining Attorney filed his brief, and applicant filed a reply brief. Applicant did not request an oral hearing before the Board.

Based on careful consideration of the arguments and evidence of record in this application, we hold that both of the cited registrations constitute bars to the registration of applicant's mark.

Our principal reviewing court has identified the factors to consider in resolving whether confusion is likely in a given case. Chief among these are the similarity of the marks as to appearance, sound, meaning and commercial impression, and the similarity of the goods. In re E. I. DuPont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). If we are left with any doubt as to the likelihood of confusion, such doubt must be resolved in favor of the prior user and registrant, and against the newcomer, who has a duty to select a mark which is not likely to cause confusion with trademarks already in use. *Burroughs-Wellcome Co. v. Warner-Lambert Co.*, 203 USPQ 191 (TTAB 1979).

Confusion is likely between applicant's "SPORTSMAN'S CUT" mark for meat-based snack foods and the cited "SPORTSMAN'S MIX" mark for dried fruits and nuts because the marks create similar commercial impressions and the goods with which they are used are related. The word "SPORTSMAN'S" is suggestive, as applied to both the goods set forth in the application and the cited registration. It suggests that these food items may be

appropriate for use by sportsmen, e.g., hunters or hikers may take these products with them into the field as snacks.

Applicant's argument that the primary significance of "SPORTSMAN'S" is that of a surname is not well taken. While there may be a relatively small number of people whose last name is "Sportsman," as this word is used as a trademark in connection with the goods set forth in both the application and the cited registrations, the suggestive connotation of "SPORTSMAN'S" clearly applies.

Applicant's argument that the third-party registration information it submitted establishes that "SPORTSMAN'S" is weak in trademark significance is also unpersuasive. It is well settled that third-party registrations have little weight on the question of whether other marks, considered in their entireties, are likely to cause confusion. The existence of such registrations is not evidence of what happens in the marketplace. They are not evidence of use of the marks depicted thereon, so they cannot establish that the consuming public has become so familiar with common components of them that purchasers look to other elements in order to distinguish among such marks. *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406 (CCPA 1967). Moreover, as the Examining Attorney points out, neither he nor the Board is bound by the decisions of other Examining Attorneys concerning the

registrability of other trademarks, nor does the existence on the register of marks which are likely to cause confusion with each other justify registration of yet another mark which is likely to cause confusion. In re National Novice Hockey League, Inc., 222 USPQ 638 (TTAB 1984). Each case must be decided on its own record and merits.

Applicant's mark combines the suggestive term "SPORTSMAN'S" with the descriptive, and hence disclaimed, word "CUT." The registered mark combines the same suggestive term with the descriptive, and hence disclaimed, word "MIX." While the two disclaimed descriptive terms cannot be ignored, and the marks must be considered in their entireties, disclaimed matter is typically less significant or less dominant than other components of trademarks. Tektronix, Inc. v. Daktronics, Inc., 534 F.2d 915, 189 USPQ 693 (CCPA 1976). The suggestive word "SPORTSMAN'S" clearly has more significance in creating the commercial impression generated by each mark. The commercial impressions these two marks create are similar because the term "SPORTSMAN'S" dominates each mark, and the disclaimed, descriptive word which is combined with "SPORTSMAN'S" in each mark has less source-identifying significance.

The third-party registration information made of record by the Examining Attorney establishes that the products with which these marks are used are related. In re Albert Trostel & Sons

Co., 29 USPQ 1783 (TTAB 1993). A purchaser familiar with the registrant's "SPORTSMAN'S MIX" dried fruit and nut mix is likely to assume that applicant's "SPORTSMAN'S CUT" snack foods are a new or different food product from the same source.

Applicant's trademark may be even more likely to cause confusion with the other cited registered trademark, "SPORTSMAN'S." Applicant's mark appropriates that entire mark and adds to it only a descriptive, disclaimed word. The goods set forth in the application, meat-based snack foods, are encompassed within the "processed meats" identified in the cited registration. Confusion is clearly likely when these very similar marks are used in connection with the same products.

DECISION: The refusal to register under Section 2(d) of the Lanham Act is affirmed.

R. F. Cissel

G. D. Hohein

G. F. Rogers  
Administrative Trademark Judges  
Trademark Trial & Appeal Board

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